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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,138	12/15/2003	Thomas E. Creamer	BOC9-2003-0081 (455)	3693
40987	7590	02/19/2008	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			PATEL, HEMANT SHANTILAL	
		ART UNIT	PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/736,138	CREAMER ET AL.	
	Examiner Hemant Patel	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The independent claim 1 recites a method listing functional or logic steps of program or algorithm. The program or algorithm is a non-statutory matter.

Claims 6-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The independent claim 6 recites an audio file comprising content as information data. This data represents audio signals. The mere data or signal is a non-statutory matter.

Claims 20-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The independent claim 20 recites machine readable storage with program code with executable instructions to perform steps. The executable machine code on a paper when read into machine for execution of these steps is a program code, or a source code on paper when read into a machine and executed by an interpreter is a source program. The mere program is a non-statutory matter.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 13-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The independent claim 13 recites a system with multiple means to perform actions. The specification describes only one means i.e. digital audio processor.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4-6, 9-13, 16-20, 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Logan (US Patent No. 5,721,827).

***Regarding claim 1,*** Logan teaches of a method of indicating content within an audio file (Fig. 7, item 460) to define a set of opening and closing audio tags and associating specific set of audio tags to specific content to indicate the beginning and

end of audio content type (col. 42, ll. 32-col. 44, ll. 30; defining an associating "H" and "E" pair; "I and "J" pair; "A" and "B" pair).

***Regarding claim 4,*** Logan teaches of the audio file stored in memory as a digitized file (Fig. 7, item 460).

***Regarding claim 5,*** Logan teaches of the content as voice prompt and a user response stored in the audio file (col. 43, ll. 56-col. 44, ll. 30).

***Regarding claim 6,*** Logan teaches of a an audio file (Fig. 7, item 460) comprising first digitized information (col. 43, ll. 24-29, the specific phrase in the audio file); and second digitized information specifying a set of tags indicating the beginning and ending of the content in the file to define a set of opening and closing audio tags and associating specific set of audio tags to specific content to indicate the beginning and end of audio content type (associated "H" and "E" tag pair) (col. 42, ll. 32-col. 44, ll. 30).

***Regarding claim 9,*** refer to rejections for claim 6 and claim 4.

***Regarding claim 10,*** refer to rejections for claim 6 and claim 5.

***Regarding claim 11,*** Logan teaches of plurality of tag sets ("H" and "E" pair; "I and "J" pair; "A" and "B" pair).

***Regarding claim 12,*** Logan teaches of using hierarchically ordered tag pairs in audio file to indicate different contents (col. 42, ll. 32-col. 44, ll. 30; all HTML tags converted to corresponding audio tags and stored in the audio file).

***Regarding claim 13,*** Logan teaches of a system (Fig. 1) with means for indicating content within an audio file by defining tags and associating the pair with the

corresponding content in the audio file to indicate the beginning and end of the content in the file (Figs. 6-7 and their descriptions).

***Regarding claim 16,*** refer to rejections for claim 13 and claim 4.

***Regarding claim 17,*** refer to rejections for claim 13 and claim 5.

***Regarding claim 18,*** refer to rejections for claim 13 and claim 11.

***Regarding claim 19,*** refer to rejections for claim 18 and claim 12.

***Regarding claim 20,*** it recites a machine readable storage with program code sections when executed on a machine cause the machine to performs the steps substantially similar to the steps of a method as claimed in claim 1. Logan teaches of such storage in a machine (Fig. 1, item 103). Refer to rejection for claim 1.

***Regarding claim 23,*** refer to rejections for claim 20 and claim 4.

***Regarding claim 24,*** refer to rejections for claim 20 and claim 5.

***Regarding claim 25,*** refer to rejections for claim 20 and claim 11.

***Regarding claim 26,*** refer to rejections for claim 25 and claim 12.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 2-3, 7-8, 14-15, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan as applied to claims 1 above, and further in view of Hamel (US Patent No. 5,943,402).

*Regarding claim 2, 3,* Logan teaches of cue in the form of tone (and hence the waveform shape since each tone with distinct frequency has a distinct waveform shape) preceding an audio passage to indicate the passage but does not clearly indicate to store it in the file.

However, in the same field of endeavor, Hamel teaches of a method and a system to indicate and store in the audio file an acoustic bullet in the form of a tone (and hence its distinct waveform shape based on the specific frequency of the tone) and corresponding annotation to indicate the type of content in the audio file (Fig. 1 for system; Figs 2A-2G for method and Figs. 3A-3B for audio file and their corresponding descriptions).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Logan to use tones to indicate the type of content in the

audio file as taught by Hamel in order to allow the user to manipulate audio content remotely using the ubiquitous keypad from a remote telephone.

***Regarding claim 7***, refer to rejections for claim 6 and claim 2.

***Regarding claim 8***, refer to rejections for claim 6 and claim 3.

***Regarding claim 14***, refer to rejections for claim 13 and claim 2.

***Regarding claim 15***, refer to rejections for claim 13 and claim 3.

***Regarding claim 21***, refer to rejections for claim 20 and claim 2.

***Regarding claim 22***, refer to rejections for claim 20 and claim 3.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,434,910	Johnson
US Patent No. 5,983,184	Noguchi
US Patent No. 6,091,714	Sensel
US Patent Application Publication No. 2002/0177914	Chase
US Patent Application Publication No. 2003/0004724	Kahn
US Patent No. 7,324,943	Rigazio

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant Patel whose telephone number is 571-272-8620. The examiner can normally be reached on 8:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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